

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Conlin Strawberry Water Company, Inc., a California corporation (U-177-W), for Authority to Sell and Del Oro Water Co., Inc. (U-61-W), for Authority to Buy the Conlin Strawberry Water Company Water System in Tuolumne County.

Application 05-12-001
(Filed Dec. 2, 2005)

Investigation on the Commission's Own Motion into the Operations and Practices of the Conlin-Strawberry Water Co. Inc. (U-177-W), and its Owner/Operator, Danny T. Conlin; Notice of Opportunity for Hearing; and Order to Show Cause Why the Commission Should Not Petition the Superior Court for a Receiver to Assume Possession and Operation of the Conlin-Strawberry Water Co. Inc. pursuant to the California Public Utilities Code Section 855.

Investigation 03-10-038
(Filed Oct. 16, 2003)

**MOTION TO DISMISS
BY THE DIVISION OF RATEPAYER ADVOCATES**

I. INTRODUCTION

The Division of Ratepayer Advocates (DRA) moves to dismiss Application (A.) 05-12-001 on the grounds that it violates Commission orders in D. 05-07-010, is unreasonable, and harms the Ratepayers. Hereafter, Danny Conlin and the Conlin Strawberry Water Co. (CSWC) are collectively referred to as “the Respondents”; CSWC and the Del Oro Water Co. (DOWC), as “the Applicants.”

Pursuant to the assigned Administrative Law Judge (ALJ) John E. Thorson’s approval and the Applicants’ stipulation via e-mail on January 13, 2006, the time to file this Motion was extended from January 13 to noon, January 17, 2006. Because of Commission computer problems on January 16, 2006, a further extension of time was granted to 5:00 p.m. on January 17, 2006.

II. BACKGROUND

Shortly after April 4, 2005, when the Proposed Decision (PD) in this matter was issued, Respondents sought to delay the issuance of a Commission decision on the basis that a sale of CSWC was imminent. However, neither CSWC nor DOWC applied for Commission approval of a sale or presented Staff with a copy of the sales contract.

Approximately six months later on October 18, 2005, Respondents filed a petition to modify D. 05-07-010. That petition represented that CSWC and DOWC had entered into a binding sales contract in July 2005. In December 2005, this A. 05-12-001 was filed which included a copy of the CSWC sales contract executed on July 20, 2005.

On January 5, 2006, DRA protested A. 05-12-001 because it contravenes Commission orders in D. 05-07-010, is unreasonable, and would harm the Ratepayers. On January 6, 2006, at the Prehearing Conference (PHC) re A. 05-12-001 and I. 03-10-038, DRA noted that basic data were missing rendering the contract legally questionable: e.g., a firm and specific sales price, a description of the properties sold, and many if not all of the appendices referenced in the CSWC sales contract.

During the PHC, ALJ Thorson directed the Applicants to provide DRA by January 11, 2006, a copy of each of the 16 documents listed as attached “Exhibits” in the CSWC sales contract but omitted with the filing of A. 05-12-001. On January 10, 2006, DRA Staff Kerrie Evans¹ met by teleconference with the Applicants — Robert Fortino, the DOWC owner; Thomas MacBride, counsel for the Respondents; and Gary Jennings, the real estate broker who prepared the contract of sale for the Applicants. According to the Applicants at this meeting, none of the missing Exhibits – as well as other missing data, e.g., sales price, a legal description of the properties to be sold – would be produced until the close of escrow.² Under the CSWC sales contract, escrow will close contingent on Commission approval of a general rate increase for CSWC that the Respondents are to

¹ Kerrie Evans has been seconded from Water Division to DRA for purposes of this and other proceedings pertaining to the Respondents.

² See Decl. of Kerrie Evans dated January 10, 2005, attached in support of this Motion. That Declaration includes a copy of an e-mail from Gary Jennings to Cleveland Lee dated January 11, 2006.

apply for which would reimburse DOWC's cost for purchasing CSWC. However, from April 2005 when the Respondents first claimed they had a sale of CSWC in hand and to the date of this Motion, no general rate case application has been filed and none is indicated to be filed soon.

III. ARGUMENTS AND AUTHORITIES

A. The Commission's Objective

In D. 05-07-010, the Commission unanimously ordered that CSWC be placed in the hands of a court-appointed Receiver to be sold. Pursuant to Court authorization, the Receiver would prepare CSWC for sale, solicit offers, and evaluate the best offer in terms of price and buyer qualifications. The Receiver would be empowered to correct any problems in selling CSWC, such as securing valid water rights. After soliciting and evaluating bids, the Receiver would present for Court approval and public review the most qualified buyer and the best offer. The Court would also decide the distribution of the sales proceeds among the Respondents, the Ratepayers, or creditors of the Respondents.

The Applicant's proposed sale would undermine the Commission's objective of finding the most qualified buyer and the best offer for CSWC. For example, the Pinecrest Permittees' Association (PPA), which operates a water system contiguous or nearby CSWC, has recently expressed to DRA an interest in purchasing CSWC. The CSWC sale contract would unreasonably and prematurely foreclose PPA and any other potential buyer from acquiring CSWC. Clearly, the Commission intends not to have CSWC sold to just any buyer or for the first offer, but to find the most qualified buyer and the best offer for CSWC. Otherwise, the Commission would not have directed that General Counsel apply to the Tuolumne County Superior Court for a receiver.

B. Protecting the Ratepayers

Finding the best offer and the most qualified new owner to operate CSWC would best serve the Ratepayers and the Commission. The CSWC sale in A. 05-12-001 detracts from these purposes. The CSWC sales contract imposes on Ratepayers a prospective

new owner without having solicited other bids and evaluating whether a better offer or a more qualified buyer is available. Further, the CSWC sale contract is riddled with uncertainties and open-ended contingencies. If a Receiver were to place CSWC on the market for sale, the sale of CSWC would not have the infirmities presented in A. 05-12-001. Court review and approval of the Receiver proposed sale would assure that the terms and conditions are firm, specific, and reasonable and would comply with the Commission's orders in D. 05-07-010.

By comparison, what is A. 05-12-001 offering? One of the most conspicuous deficiencies in A. 05-12-001 is the omission of the Respondents' own valid water rights. In A. 05-12-001, CSWC proposes to quitclaim any water rights but this begs the question what are the Respondents' water rights. Despite ALJ Thorson's orders that the Applicants provide DRA with all the exhibits missing in the sales contract, these water rights remain no further specified or proven than when in April 2005 when the Respondents claimed they had a sale or since December 2, 2005, when A. 05-12-001 was filed. If such rights exist, the Respondents would have come forward with them by now. If CSWC were sold without having any water rights, this could pose unforeseen burdens to the Ratepayers.

By contrast, the Receiver would move expeditiously to ascertain the Respondents' water rights, and if none were found, the Receiver would be empowered to secure the necessary water rights from the pertinent State and Federal authorities (e.g., the U.S. Department of Forestry). Given the Respondent's record of defiance of past Commission orders and his apparent indifference to ratepayer interests, it is doubtful that the Respondents would be as willing or efficient in resolving the water rights issue than the Receiver.

Another conspicuous deficiency in A. 05-12-001 is that while the sales contract provides for payment of the real estate broker's commission, no provision is made for payment of the reparations ordered by D. 05-07-010. By contrast, the Receiver would ensure that these reparation orders would be addressed in any sale of CSWC. After comparing what A. 05-12-001 offers with what the Receiver could provide, the most

reasonable and best choice for the Commission is to deny A. 05-12-001 with prejudice and thus prevent any delay in having Receiver appointed.

IV. CONCLUSION

The Commission owes it to the Ratepayers to have a court-appointed Receiver sell CSWC. If the PPA is interested in CSWC, this proves that more interested potential buyers exist other than just DOWC. At the very least, the Ratepayers should have an opportunity to hear what other buyers would offer and review their qualifications. The Receiver presents the best option for the Ratepayers.

By contrast, A. 05-12-001 is a rush to sell, without soliciting and evaluating any competitive bids. It presents a poorly documented and ill-conceived CSWC sale that is contingent on highly speculative events, i.e., when a general rate case is filed and if the Commission will approve a high rate increase for CSWC's Ratepayers. It fails to prove the existence of Respondents' water rights. It disregards payment of Commission ordered reparations. In summary, the proffered sale A. 05-12-001 would harm the Ratepayers and defeat the Commission's purposes in having the Receiver sell CSWC. Therefore, DRA respectfully requests that the Commission deny A. 05-12-001 with prejudice.

Respectfully submitted,

/s/ CLEVELAND W. LEE

Cleveland W. Lee
Staff Counsel

Attorney for the Division of Ratepayer
Advocates

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-1792
Fax: (415) 703-2262

January 17, 2005

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**MOTION TO DISMISS BY THE DIVISION OF RATEPAYER ADVOCATES**” in **A.05-12-001 et al.** by using the following service:

[X] **E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

[] **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on **January 17, 2006** at San Francisco, California.

/s/ Rebecca Rojo
Rebecca Rojo

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.
